

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

THE TERRAMITE CORPORATION <sup>1/</sup>

Employer

and

Case 9-RC-17920

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL NO. 132, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer is engaged in the manufacture and sale of small and medium sized front end loaders and street sweepers from its facility located in the vicinity of Charleston, West Virginia. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of approximately 33 employees in the following classifications: All full-time and regular part-time production and maintenance employees, including team leaders and warehouse clericals, employed by the Employer at its 660 Goff Mountain Road, Cross Lanes, West Virginia facility, excluding employees employed by temporary agencies, temporary summer employees, managerial employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act. There is no history of collective bargaining affecting the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issues raised by the petition. The parties waived the filing of briefs. The record discloses that there are no material issues in dispute. In this regard, I note that the parties reached several stipulations on the record. The parties stipulated and I find that the unit sought by the Petitioner, as described above, is an appropriate unit for purposes of collective bargaining. In addition, the parties stipulated that two warehouse clericals and five team leaders, whom the Employer initially asserted were statutory supervisors within the meaning of Section 2(11) of the Act, did not possess any indicia of supervisory authority and shared a sufficient community of interest with the other unit employees to warrant their inclusion in any unit found appropriate. The two warehouse clericals who are specifically included are: Bruce Grayley and Tommy Hynes and the five team leaders who are specifically included in the unit are: Ron Daniels; Butch Jones; Doug Burford; Chuck Casto; and Richard Jividen. The record, while limited, supports the parties' stipulation including these employees in the unit.

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<sup>1/</sup> The Employer's name appears as amended at hearing.

The parties also stipulated that certain employees are managerial or supervisory and should be excluded from any unit found appropriate. The parties agreed to exclude the following individuals as managerial: Robert Cunningham, president; John Paul Cunningham, vice-president; Doreen Lani, office manager; Bill Walls, operations director; Barbara Cavender, marketing manager; Michelle Jones, accounting manager; Thadd McClung, safety director; William Cornelius (Bud) Martin, regional sales manager; Jay Phillips, production manager; Tim Barnett, facilities manager; Mark Brooks, materials manager; and Bryan Collier, customer service manager. The parties agreed that the following individuals are supervisors within the meaning of Section 2(11): Bryce Herdman; Gary Jividen; Steve McCarty; Eric Harper; Virgil Sargent; Jack Hartline; Hall Fisher; Larry Redman; Dave Allen; Ben Parsons; Robert Branson; Randy Bossie; Jeff Bowman; and David Bonnett. The record supports the parties' stipulations that the above-named employees are managerial employees or supervisors within the meaning of Section 2(11).

In addition to the above, the parties stipulated that certain other employees should be excluded from any unit found appropriate on the basis that they are office clerical employees who lack a community of interest with the employees in the unit. Those employees are: Linda Oyler, accounts payable clerk; Rebecca Lacy and Barbara Harrison, accounts receivable clerks; Robert Topp, Felix Harris and Tim Edmons, parts order clerks; Russell Kennedy, warranty claims clerk; Angela King and Rick Comer, sales associates; Ken Schmidt, MRP controller; Michelle Childers and Kimberly Young, MRP job order clerks; Frank Bowles, buyer; Mike Reed, CAD (computer aided design) technician; and Randall Oney, graphics designer.

## **I. EXCLUSIONS FROM THE UNIT**

The parties agree, the record shows, and I find that the following individuals are supervisors within the meaning of the Act: Bryce Herdman; Gary Jividen; Steve McCarty; Eric Harper; Virgil Sargent; Jack Hartline; Hall Fisher; Larry Redman; Dave Allen; Ben Parsons; Robert Branson; Randy Bossie; Jeff Bowman; and David Bonnett. Accordingly, I will exclude them from the unit.

The parties agree, the record shows, and I find that the following individuals are managerial employees who should be excluded from the unit: Robert Cunningham, president; John Paul Cunningham, vice-president; Doreen Lani, office manager; Bill Walls, operations director; Barbara Cavender, marketing manager; Michelle Jones, accounting manager; Thadd McClung, safety director; William Cornelius (Bud) Martin, regional sales manager; Jay Phillips, production manager; Tim Barnett, facilities manager; Mark Brooks, materials manager; and Bryan Collier, customer service manager. Accordingly, I will exclude them from the unit.

The parties agree, the record shows, and I find that the following individuals are office clerical employees who do not share a community of interest with the unit employees and should be excluded from the unit found appropriate: Linda Oyler, accounts payable clerk; Rebecca Lacy and Barbara Harrison, accounts receivable clerks; Robert Topp, Felix Harris, and Tim Edmons, parts order clerks; Russell Kennedy, warranty claims clerk; Angela King and Rick Comer, sales associates; Ken Schmidt, MRP controller; Michelle Childers and

Kimberly Young, MRP job order clerks; Frank Bowles, buyer; Mike Reed, CAD (computer aided design) technician; and Randall Oney, graphics designer. Accordingly, I will exclude them from the unit.

## II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time production and maintenance employees, including team leaders and warehouse clericals, employed by the Employer at its 660 Goff Mountain Road, Cross Lanes, West Virginia facility, excluding employees employed by temporary agencies, temporary summer employees, managerial employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.**

## III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on whether they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers, Local No. 132, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. VOTING ELIGIBILITY**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been

permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **July 16, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **C. NOTICE OF POSTING OBLIGATIONS**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

*Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDST on **July 23, 2004**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 9<sup>th</sup> day of July 2004.

*/s/ Gary W. Muffley*

Gary W. Muffley, Regional Director  
Region 9, National Labor Relations Board  
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550 Main Street  
Cincinnati, Ohio 45202-3271